

§ 308.542

§ 308.542 Collection of civil penalties and assessments.

Sections 3806 and 3808(b) of Title 31, United States Code, authorize actions for collection of civil penalties and assessments imposed under this subpart and specify the procedures for such actions.

§ 308.543 Right to administrative offset.

The amount of any penalty or assessment which has become final, or for which a judgment has been entered under § 308.541 or § 308.542 of this subpart, or any amount agreed upon in a compromise or settlement under § 308.545 of this subpart, may be collected by administrative offset under 31 U.S.C. 3716, except that an administrative offset may not be made under this section against a refund of an overpayment of federal taxes, then or later owing by the United States to the defendant.

§ 308.544 Deposit in Treasury of United States.

All amounts collected pursuant to this subpart will be deposited as miscellaneous receipts in the Treasury of the United States, except as provided in 31 U.S.C. 3806(g).

§ 308.545 Compromise or settlement.

(a) Parties may make offers of compromise or settlement at any time.

(b) The reviewing official has the exclusive authority to compromise or settle a case under this subpart at any time after the date on which the reviewing official is permitted to issue a complaint and before the date on which the ALJ issues an initial decision.

(c) The Board has exclusive authority to compromise or settle a case under this subpart any time after the date on which the ALJ issues an initial decision, except during the pendency of any review under § 308.541 of this subpart or during the pendency of any action to collect penalties and assessments under § 308.542 of this subpart.

(d) The Attorney General has exclusive authority to compromise or settle a case under this subpart during the pendency of any review under § 308.541 of this subpart or of any action to re-

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cover penalties and assessments under 31 U.S.C. 3806.

(e) The investigating official may recommend settlement terms to the reviewing official, the Board, or the Attorney General, as appropriate. The reviewing official may recommend settlement terms to the Board, or the Attorney General, as appropriate.

(f) Any compromise or settlement must be in writing.

§ 308.546 Limitations.

(a) The notice of hearing with respect to a claim or statement will be served in the manner specified in § 308.507 of this subpart within 6 years after the date on which such claim or statement is made.

(b) If the defendant fails to file a timely answer, service of notice under § 308.509(b) of this subpart will be deemed a notice of a hearing for purposes of this section.

(c) The statute of limitations may be extended by agreement of the parties.

Subpart U—Removal, Suspension, and Debarment of Accountants From Performing Audit Services

SOURCE: 68 FR 48270, Aug. 13, 2003, unless otherwise noted.

§ 308.600 Scope.

This subpart, which implements section 36(g)(4) of the FDIA (12 U.S.C. 1831m(g)(4)), provides rules and procedures for the removal, suspension, or debarment of independent public accountants and accounting firms from performing independent audit and attestation services required by section 36 of the FDIA (12 U.S.C. 1831m) for insured depository institutions for which the FDIC is the appropriate Federal banking agency.

§ 308.601 Definitions.

As used in this subpart, the following terms shall have the meaning given below unless the context requires otherwise:

(a) *Accounting firm* means a corporation, proprietorship, partnership, or other business firm providing audit services.

(b) *Audit services* means any service required to be performed by an independent public accountant by section 36 of the FDIA and 12 CFR part 363, including attestation services.

(c) *Independent public accountant* (accountant) means any individual who performs or participates in providing audit services.

§ 308.602 Removal, suspension, or debarment.

(a) *Good cause for removal, suspension, or debarment*—(1) *Individuals*. The Board of Directors may remove, suspend, or debar an independent public accountant under section 36 of the FDIA from performing audit services for insured depository institutions for which the FDIC is the appropriate Federal banking agency if, after service of a notice of intention and opportunity for hearing in the matter, the Board of Directors finds that the accountant:

(i) Lacks the requisite qualifications to perform audit services;

(ii) Has knowingly or recklessly engaged in conduct that results in a violation of applicable professional standards, including those standards and conflicts of interest provisions applicable to accountants through the Sarbanes-Oxley Act of 2002 (Pub. L. 107-204, 116 Stat. 745 (2002)) (Sarbanes-Oxley Act) and developed by the Public Company Accounting Oversight Board and the Securities and Exchange Commission;

(iii) Has engaged in negligent conduct in the form of:

(A) A single instance of highly unreasonable conduct that results in a violation of applicable professional standards in circumstances in which an accountant knows, or should know, that heightened scrutiny is warranted; or

(B) Repeated instances of unreasonable conduct, each resulting in a violation of applicable professional standards, that indicate a lack of competence to perform audit services;

(iv) Has knowingly or recklessly given false or misleading information, or knowingly or recklessly participated in any way in the giving of false or misleading information, to the FDIC or any officer or employee of the FDIC;

(v) Has engaged in, or aided and abetted, a material and knowing or reck-

less violation of any provision of the Federal banking or securities laws or the rules and regulations thereunder, or any other law;

(vi) Has been removed, suspended, or debarred from practice before any Federal or state agency regulating the banking, insurance, or securities industries, other than by an action listed in § 308.603, on grounds relevant to the provision of audit services; or

(vii) Is suspended or debarred for cause from practice as an accountant by any duly constituted licensing authority of any state, possession, commonwealth, or the District of Columbia.

(2) *Accounting firms*. If the Board of Directors determines that there is good cause for the removal, suspension, or debarment of a member or employee of an accounting firm under paragraph (a)(1) of this section, the Board of Directors also may remove, suspend, or debar such firm or one or more offices of such firm. In considering whether to remove, suspend, or debar an accounting firm or an office thereof, and the term of any sanction against an accounting firm under this section, the Board of Directors may consider, for example:

(i) The gravity, scope, or repetition of the act or failure to act that constitutes good cause for the removal, suspension, or debarment;

(ii) The adequacy of, and adherence to, applicable policies, practices, or procedures for the accounting firm's conduct of its business and the performance of audit services;

(iii) The selection, training, supervision, and conduct of members or employees of the accounting firm involved in the performance of audit services;

(iv) The extent to which managing partners or senior officers of the accounting firm have participated, directly, or indirectly through oversight or review, in the act or failure to act; and

(v) The extent to which the accounting firm has, since the occurrence of the act or failure to act, implemented corrective internal controls to prevent its recurrence.

(3) *Limited scope orders*. An order of removal, suspension (including an immediate suspension), or debarment